IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 349 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJ POLLUTION CONTROL BOARD

Versus

M/S.ASHWIN CHEMICALS

Appearance:

MR HARESH J TRIVEDI for Petitioner

MR VC DESAI for Respondent No. 1 to 4.

MR AJ DESAI, APP for Respondent No. 5

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 16/01/2001

ORAL JUDGEMENT

1. The Petitioner-Gujarat Pollution Control Board (hereinafter referred to as `the Board') has filed this Criminal Revision Application challenging the order dated 1.7.1994 passed by the learned Chief Metropolitan Magistrate, Ahmedabad, in Criminal Case No.2013/89, whereby the learned Magistrate has discharged all the accused as the accused have not violated Sec.13 of the Gujarat Air (Prevention and Control of Pollution) Act, 1981.

2. The facts giving rise to this application are as

under:

2.1 M/s.Ashwin Chemicals - respondent No.1 is a partnership firm which is engaged in the production of products like Sodium Bisuplhate, Sodium Sulphate, etc. by using Soda Ash, Sulphur, etc. as raw material. The respondent No.1 started its production in or about 1970-71. It has been submitted by the petitioner that since respondent no.1's industrial plant is situated in Ahmedabad which had been declared by the State Board as an Air Pollution Control area, it was required to obtain previous consent of the petitioner Board before starting operations of its industrial plant. It has been contended that the respondent No.1 did not obtain required consent of the petitioner Board. Further the respondent No.1 also failed to provide Port Hotels, Platforms, conveniently located for easy access to portholes, and all other necessary facilities for taking samples of air or emission from Chimney, duct or any other sources and outlets, stationery or mobile as prescribed under Rule 12(1) of the Gujarat Air (Prevention and Control of Pollution) Rules, 1982 (hereinafter referred to as `the Rules') and, therefore, it has been contended that the respondents No.1 to 4 contravened the provisions of Secs.21(1) & 21(2) and 26(1) of the Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as `the Act') as well as Rule 12(1) of the Rules which constituted offences punishable under Secs.37 and 39 read with Sec.40 of the Act.

2.2 It was further alleged that the authorised officers of the petitioner Board inspected respondent No.1's industrial plant on 23.6.1989 and submitted their inspection report of even date under Sec.24 of the Act. It was further alleged that on going through the said inspection report and case papers file of the respondent No.1 unit, it was decided to prosecute respondents No.1 to 4 for offences punishable under Secs.37 and 39 read with Sec.40 of the Act, and accordingly Criminal Case No.2013/89 came to be filed against the accused. It was further submitted that the Government of Gujarat had issued a notification declaring the area of Ahmedabad as Air Pollution Controlled Area, which notification was duly published in the Gazette on 3.8.1984 as well as in two local daily newspapers i.e. `Sandesh' and `Times of India' on 11.10.1984, 21.11.1984 and 24.11.1984 by way of public notices. According to the petitioner, the respondent No.1 factory is situated in Ahmedabad and that they had not made any provision or facility for taking sample of air or emission coming out from the chimney or duct or any other source of outlet of accused no.1

factory. Thereafter the petitioner Board has lodged Criminal Case being Criminal Case No.2013/89 in the court of Chief Metropolitan Magistrate, Ahmedabad, against the accused and the matter was heard by learned Chief Metropolitan Magistrate, Ahmedabad. On being served with the summons issued by the trial Court, the accused appeared before the Court. The present petitioner original complainant did not produce any evidence as well as other evidence which are required to be proved by the petitioner that the Government Notification declaring Ahmedabad area as Air Pollution Controlled Area in this behalf. In absence of the said notification, the learned Magistrate has held that the accused has not committed offence and the question of the accused having not obtained the consent of the Board before starting their industrial plant did not arise and, therefore, by his order dtd.1.7.94 the learned Magistrate has discharged all the accused.

2.3 Being aggrieved and dissatisfied with the order of the learned Magistrate, the petitioner-Board has filed this application before this Court. The same was filed on 16th August, 1994. Before this Court also the petitioner-Board did not produce notification showing the Ahmedabad City as air pollution controlled area. The petitioner-Board has also not produced any advertisement which has been published in the gazette.

3. Mr.V.C.Desai, learned advocate for the respondents No.1 to 4 appeared and stated that immediately after the filing of complaint the respondents have applied to the Gujarat Pollution Control Board for necessary consent under Sec.21 of the Air (Prevention and Control of Pollution) Act, 1981, and the said consent order issued on 26th April, 1990. He submitted that in view of the same, no useful purpose will be serve for adjudicating the matter in detail.

4. In view of the same, this Criminal Revision Application stands disposed of accordingly. Rule is discharged.

(K.M. Mehta, J.)

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